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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,165	01/26/2001	Xing Chen	ASX-015CP 1040	
21323	7590 11/18/2003		EXAMINER	
TESTA, HURWITZ & THIBEAULT, LLP			PASCHALL, MARK H	
	HIGH STREET TOWER 125 HIGH STREET		ART UNIT	PAPER NUMBER
BOSTON, MA 02110			3742	
			DATE MAILED: 11/18/2003	10

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.		4	\sim					
## Examiner Art Unit 3742 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Editorization of lines may be available under the provisions of 37 GPR 1.136(a). In on event, however, may a reply be timely filled if the period for reply specified above, the reasonable of 37 GPR 1.136(a). In on event, however, may a reply be timely filled if the period for reply specified above, the reasonable of period will apply und vide legacy SEX (0) MCNR This from the maining date of this communication of the period for reply specified above, the reasonable of period will apply und vide legacy SEX (0) MCNR This from the maining date of this communication of the period for reply specified above, the reasonable of period will apply und vide legacy SEX (0) MCNR This from the maining date of this communication. Period to the period of this communication, even if timely filled, may reduce any vented patent from siliple date of this communication, even if timely filled, may reduce any vented patent from the period for the three maining date of this communication, even if timely filled, may reduce any vented patent from the period of this communication, even if timely filled, may reduce any vented patent from the period of this communication. 1) Responsive to communication for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s)	,	Application No.	Applicant(s)					
Mark H Paschall 3742		09/774,165	CHEN ET AL.					
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Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. E detentions of times may be available under the provisions of 37 CFR 1.736(a). In no event, however, may a reply be fitnedly fitted Etherperiod for reply a beardles down, the maximum statutory period will apply and will expire \$1X (6) MONTHS from the mailing date of this communication for reply as pecified above, the maximum statutory project will apply and will expire \$1X (6) MONTHS from the mailing date of this communication, even if timely fitted, may reduce a my outperformed patient turn adjustment. See 37 CFR 1.736(a). Status 1) Responsive to communication(s) filled on								
THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CPR 1.136(a). In no event, however, may a reply be limitly filled after SX (6) MONTHS from the mailing date of this communication. If NO percold from the mailing date of this communication, apply whitin the statistory providing the pays and vill easing tix (6) MONTHS from the mailing date of this communication. Failure to reply within the set of actended period for reply will, by datable, cause the application to become ARANCONED (35 U.S. § 133). Any reply received by the Official exits than there mention later the mailing date of this communication, even if timely filled, may reduce any example patient term objective to communication (s) filled on								
2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-51 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are ellowed. 7) Claim(s) are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received. 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. Attachment(s) 10 Notice of References Cited (PTO-952) 5) Notice of Informal Patent Application (PTO-152)	THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any							
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a) The translation of the foreign language provisional application has been received. 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 4) Interview Summary (PTO-413) Paper No(s). 5) Notice of Informal Patent Application (PTO-152)	·							
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Double Pat nting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-51 are rejected under the judicially created doctrine of double patenting over claims 1-51 of U. S. Patent No. 6,486,431 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: the instant claims include both a processing chamber and a plasma chamber which are partially inclusive. These features are set froth in claims 16 and 17 particularly, in the parent patent. All of the claimed features are found in claims 1-51 in the parent patent, 6,486,431.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

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Allowable Subject Matter

As allowable subject matter has been indicated, applicant's reply must either

comply with all formal requirements or specifically traverse each requirement not

complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a). The instant claims would

be allowed upon submission of a timely and proper terminal disclaimer.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mark H Paschall whose telephone number is 703 308-

1642. The examiner can normally be reached on 7am - 3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Teresa Walberg can be reached on 703 308-1327. The fax phone number

for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is 703 308-

0861.

Mark H Paschall Primary Examiner

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